

Message Text

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ACTION EB-07

INFO OCT-01 CIAE-00 COME-00 DODE-00 NRC-05 NSAE-00 USIA-06

TRSE-00 EUR-12 ERDA-05 ISO-00 /036 W

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R 211747Z MAY 76

FM AMEMBASSY BONN

TO SECSTATE WASHDC 9102

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EXCON

E.O. 11652: N/A

TAGS: ESTC, XG, GW

SUBJ: EXPORT CONTROL COMPLIANCE STUDY

REF: (A) STATE 66662; (B) BONN 6917

1. FOLLOWING ARE REPLIES TO REFTEL QUESTIONS:

A. FRG EXPORT CONTROL REGULATIONS ADMINISTRATION IS THE RESPONSIBILITY OF THE ECONOMICS MINISTRY OPERATING THROUGH A SUBSIDIARY OFFICE, THE BUNDESAMT FUER GEWERBLICHE WIRTSCHAFT (BAW - FEDERAL OFFICE FOR INDUSTRIAL TRADE). THE LEGAL BASIS FOR BAW EXPORT CONTROL ACTIVITY IS THE FRG FOREIGN TRADE LAW OF 1961 WHICH INCORPORATED LEGISLATION ENACTED DURING THE EARLY YEARS OF FRG SOVEREIGNTY ASSUMING EXPORT CONTROL FUNCTIONS FROM ALLIED OCCUPATION AUTHORITIES. THE FOREIGN TRADE LAW WAS MODIFIED EXTENSIVELY IN MARCH 1976, PARTLY BECAUSE THE 1961 LAW WAS FOUND TO BE UNCONSTITUTIONAL IN MANY OF ITS PROVISIONS. HOWEVER, PARA 28 OF THE LAW, WHICH ENTRUSTED EXPORT CONTROL REGULATION TO THE BAW, REMAINS UNCHANGED AND UNCHALLENGED. THE BAW IS ALSO RESPONSIBLE FOR COCOM ENFORCEMENT. COCOM POLICY IS DECIDED BY A UNIT IN THE ECONOMICS MINISTRY WORKING WITH THE FOREIGN OFFICE.

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B. THE BAW DOES NOT NORMALLY HAVE ACCESS TO INDUSTRY, NOR DOES IT BECOME INVOLVED IN THE CONTROL OF ANY SPECIFIC GOODS SHIPMENT. THIS IS A RESPONSIBILITY OF THE CUSTOMS SERVICE, A DIVISION OF THE FINANCE MINISTRY. SHOULD THE BAW HAVE REASON TO SUSPECT THAT SOME PARTICULAR FIRM IS IN VIOLATION OF COCOM RESTRICTIONS, IT CAN REQUEST THE CUSTOMS SERVICE TO INVESTIGATE. THE CUSTOMS SERVICE CAN AND OCCASIONALLY DOES ASSIGN AGENTS FULL TIME TO PLANTS MANUFACTURING AND EXPORTING SENSITIVE GOODS.

C. THE BAW HAS NO INVESTIGATIVE SERVICE OF ITS OWN; IT DEPENDS UPON CUSTOMS SERVICE AND POLICE TO TURN UP AND/OR INVESTIGATE ALLEGED VIOLATIONS. LIKEWISE THE BAW DOES NOT MAKE COCOM POLICY, SUCH POLICY COMING FROM THE BAW "PARENT ORGANIZATION" OF THE ECONOMICS MINISTRY.

D. WHEN A VIOLATION IS SUSPECTED, THE BAW NOTIFIES THE APPROPRIATE LAND OBERFINANZDIREKTION (CHIEF STATE FINANCE AUTHORITY) AND REQUESTS AN INVESTIGATION BY THE CUSTOMS SERVICE. THE RESULTS OF THE CUSTOMS INVESTIGATION ARE PASSED TO THE BAW WHICH, IN CONSULTATION WITH THE FINANCE AUTHORITY, DECIDES THE DEGREE OF POSSIBLE VIOLATION. THEORETICALLY, A MAJOR VIOLATION CAN RESULT IN CRIMINAL PROSECUTION BY THE FRG JUSTICE AUTHORITIES. PROVISION FOR SUCH PROSECUTION IS CONTAINED IN PARAGRAPH 33 OF THE FOREIGN TRADE ACT. IN ACTUAL PRACTICE IT HAS BEEN FOUND EXTREMELY

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DIFFICULT TO CONVICT VIOLATORS ON CRIMINAL CHARGES SINCE IT MUST BE PROVED THAT NATIONAL SECURITY HAS BEEN CLEARLY ENDANGERED. NORMALLY THE FINANCE AUTHORITIES IMPOSE A MONETARY FINE AND LESS FREQUENTLY A TERM IN PRISON FOR OFFICIALS OF FIRMS FOUND GUILTY OF VIOLATIONS. PARAGRAPH 34 OF THE FOREIGN TRADE LAW AUTHORIZES THE STATE FINANCE AUTHORITIES TO IMPOSE SUCH PENALTIES.

E. FRG AUTHORITIES ARE FOR THE MOST PART SATISFIED WITH THE FUNCTIONING OF THEIR COCOM ENFORCEMENT PROGRAM. THERE IS SOME DISCONTENT WITH THE FACT THAT PROVING NATIONAL SECURITY ENDANGERMENT IS SO DIFFICULT THUS MAKING THE IMPOSITION OF HEAVY PENALTIES ON VIOLATORS A RARITY. IN THIS REGARD THE ECONMIN COCOM DESK CHIEF CITED THE LORENZ CASE AS ONE IN WHICH SEVERE PENALTIES SHOULD HAVE BEEN AUTOMATIC GIVEN THE VOLUME AND WORTH OF THE DIVERSIONS; BUT THAT THE FRG PROSECUTOR HIMSELF HAD GREAT DIFFICULTY ESTABLISHING THAT NATIONAL SECURITY HAD ACTUALLY BEEN ENDANGERED BY LORENZ ACTIVITIES.

F. IT APPARENT THAT AT POLICY-MAKING LEVEL IN FRG THERE IS LIMITED INTEREST IN IMPROVING COCOM ENFORCEMENT MEASURES. AT WORKING LEVEL THERE IS LIMITED OFFICIAL USE

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EVIDENCE SOME DISCONTENT WITH RELATIVE TOOTHLESSNESS OF PROSECUTION OF VIOLATORS. NEVERTHELESS GERMANS DO INVESTIGATE, PURSUE AND PROSECUTE VIOLATORS, EVEN IF RESULTING PROSECUTIONS MORE OF WRIST SLAP THAN ANYTHING ELSE. WE DOUBT THAT FRG WOULD BE RECEPTIVE TO ANY EFFORTS WE MIGHT MAKE TO TIGHTEN UP SYSTEM WHICH, WITH ALL ITS WEAKNESSES, REMAINS RELATIVELY EFFECTIVE INVESTIGATIVE AND CONTROL ORGANIZATION.

2. STATISTICS ON VIOLATIONS AND PROSECUTIONS WILL BE PROVIDED ASAP WHEN RECEIVED FROM FINANCE MINISTRY.
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Message Attributes

Automatic Decaptioning: X
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: EXPORTS, LAW, TREATY COMPLIANCE, STRATEGIC TRADE CONTROLS
Control Number: n/a
Copy: SINGLE
Draft Date: 21 MAY 1976
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Authority: ShawDG
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 28 MAY 2004
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1976BONN08772
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Film Number: D760198-0201
From: BONN
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1976/newtext/t19760530/aaaaazef.tel
Line Count: 164
Locator: TEXT ON-LINE, ON MICROFILM
Office: ACTION EB
Original Classification: LIMITED OFFICIAL USE
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 3
Previous Channel Indicators: n/a
Previous Classification: LIMITED OFFICIAL USE
Previous Handling Restrictions: n/a
Reference: 76 STATE 66662, 76 BONN 6917
Review Action: RELEASED, APPROVED
Review Authority: ShawDG
Review Comment: n/a
Review Content Flags:
Review Date: 28 APR 2004
Review Event:
Review Exemptions: n/a
Review History: RELEASED <28 APR 2004 by BoyleJA>; APPROVED <16 AUG 2004 by ShawDG>
Review Markings:

Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
04 MAY 2006

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: EXPORT CONTROL COMPLIANCE STUDY
TAGS: ESTC, XG, GE
To: STATE
Type: TE
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 04 MAY 2006